UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SYSTEMS TRAINING AND RESOURCE TECHNOLOGIES, INCORPORATED[1/]

Employer

and

NATIONAL ASSOCIATION OF SPECIAL POLICE AND SECURITY OFFICERS

Petitioner

and

INDUSTRIAL, TECHNOLOGICAL AND PROFESSIONAL EMPLOYEES UNION, AFL-CIO

Intervenor

Case 5-RC-14983

DECISION AND ORDER

Upon a petition duly filed under Section 9*(c)* of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3*(b)* of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9*(c)(1)* and Section 2*(6) (7)* of the Act for the following reasons:

SEE ATTACHED

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **April 21, 2000.**

Dated ___April 7, 2000____

at __Baltimore, Maryland____

____/s/ LOUIS J. D'AMICO_____
Regional Director, Region 5

1/ The name of the Employer appears as amended at the hearing.

2/ The Employer, **Systems Training and Resource Technologies, Incorporated** (also referred to as Startech) is incorporated in, and operates from an office and place of business located in the District of Columbia, and is engaged in the business of providing security guard services to various firms and institutions located in the District of Columbia, the Commonwealth of Pennsylvania and the State of Maryland, including the Patent and Trademark Office Complex in Crystal City, Virginia. Based on the Employer's projected operations at the Patent and Trademark Office Complex in Crystal City, Virginia from March 1, 2000, the Employer will annually perform services valued in excess of $50,000 at that site pursuant to contract with the United States Patent and Trademark Office. The parties stipulated and the record shows that the Employer is engaged in commerce within the meaning of the Act. Only the Employer's operations located in Crystal City, Virginia are involved in these proceedings.

On March 8, 2000, Petitioner, **National Association of Special Police and Security Officers**, filed the petition in this case seeking to represent the unit of all full-time and regular part-time security officers employed by the Employer at the Patent and Trademark Building in Crystal City, Virginia. The Petitioner is willing to proceed to an election in any unit deemed appropriate on this record by the Regional Director.

At the hearing, the **Industrial, Technological and Professional Employees Union, AFL-CIO** entered a motion that it be allowed to intervene in these proceedings. The motion to intervene was granted. The Intervenor previously represented a portion of security guards employed at the Patent and Trademark Office Complex in Crystal City, Virginia. The Intervenor stipulated that it admits into membership both guards and non-guard employees, is affiliated with the AFL-CIO, and therefore does not meet the definition of a guard union as defined in Section 9(b)(3) of the Act.

3/ The parties stipulated that the **Petitioner** and the **Intervenor** are labor organizations within the meaning of the National Labor Relations Act.

4/ The parties stipulated to the appropriate Unit:

> All security officers employed by the Employer at the Patent and Trademark Office Complex in Crystal City, Virginia, but excluding the project manager, captain, salaried lieutenant, office clerical employees and supervisors as defined in the Act.

There are approximately 45 security officers in the petitioned for unit of employees. The parties stipulated that the three (3) individuals holding the position of **project manager, captain and salaried lieutenan**t each have the authority in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or to responsibly direct them or to adjust grievances or effectively

recommend such action. All individuals holding the above-described positions are supervisors within the meaning of the Act and are **excluded** from the unit.

DISPUTED ISSUES

- **Does the Employer's voluntary recognition of the Intervenor as the exclusive collective-bargaining representative of the unit of petitioned for employees bar the processing of this election petition.**

- **Does the Employer's status as successor to the service contract bar the instant representation petition.**

- **Is there a valid collective-bargaining agreement covering the unit of petitioned for employees that bars the processing of this election petition.**

HISTORY OF COLLECTIVE BARGAINING

Prior to March 1, 2000, the United States Patent and Trademark Office contracted with three separate companies to provide security services covering multiple buildings at its Crystal City, Virginia office complex. Masters Security Services, Inc. (hereinafter Masters) employed approximately 8 security guards, International Security Service and Investigations, Inc. (hereinafter International) employed approximately 23 security guards, and the Employer employed 14 security guards at Crystal Park II. Prior to March 1, security guards employed by International and by Masters were covered by collective-bargaining agreements with the Intervenor. Beginning March 1, 2000, the contract for security services covering the entire office complex was awarded to the Employer. On March 1, when the Employer took over security coverage for the entire Crystal City complex, it performed the same guard services with approximately the same number of unit employees that had been previously employed by the three companies described herein. The parties stipulated that there has been a **history of collective-bargaining** covering a portion of the security guard officers involved in this proceeding.

NEW BARGAINING RELATIONSHIP

The Employer's vice-president Randall Ford testified that the Employer's current contract with the United States Patent and Trademark Office is under the Service Contract Act, and is for an initial term from March 1, 2000 to September 30, 2000, with consecutive four-year options running from October 1 to September 30. On February 18, 2000, the Patent and Trademark Office contracting officer notified Ford and the Employer's president Marion Pinkney that the Employer had been awarded the service contract. The parties met that evening to finalize the agreement. Only minutes prior to the meeting with government officials, Ford received for the first time a copy of the addendum agreement covering wages and benefits between the Intervenor and the predecessor contractor International.

Ford testified that on March 3, the Intervenor faxed a letter to the Employer acknowledging the Employer as the successor employer and requesting recognition as the exclusive bargaining representative of the Employer's guard employees. Included with the faxed correspondence was a list of 26 bargaining unit employees who had authorized deductions for union dues. On March 3, Ford spoke with the Intervenor's representative Eddie Roden and requested that the Intervenor demonstrate that it enjoyed majority support among the unit of employees by presenting union authorization cards. According to Ford, the Employer received the requested union authorization cards between March 3 and March 7. Ford testified that the Employer and Intervenor did not discuss the duration clause or any other substantive provision of the adopted collective-bargaining agreement. The duration clause of the adopted collective-bargaining agreement reads:

> This agreement shall become effective March 1, 1996 and shall continue in full force and effect until February 28, 1999 and shall ***renew itself each successive February 28 thereafter*** unless written notice of an intended change is served in accordance with the Labor Management Relations Act, as amended, by either party hereto at least sixty (60) days but not more than ninety (90) days prior to the termination date of the contract.

On or about March 3, the Employer contacted the government contracting officer to verify the existence of a collective-bargaining agreement between the Intervenor and the predecessor employer International, covering guard employees. On March 7, government contracting officer Harvey Shepherd faxed a copy of the predecessor collective-bargaining agreement to the Employer. On March 7, after receipt and review of the union authorization cards, Pinkney signed the memorandum of acceptance adopting the collective-bargaining agreement in effect between the Intervenor and International, the memorandum of agreement requiring contributions to the health and welfare fund, the memorandum of agreement requiring contributions to the pension fund and the memorandum of agreement requiring union dues deductions. Ford testified that the executed agreements were faxed to the Intervenor on March 9. On March 8, the Employer received by fax the instant petition filed by the Petitioner for representation of the Employer's guard employees.

Caleeb Burris is president of the Petitioner. On March 3, Burris called Pinkney by cell phone and informed Pinkney that the Petitioner had been contacted by the Employer's Crystal City, Virginia employees. Pinkney told Burris there was already a collective-bargaining agreement in effect. Burris testified that at the time of his phone call to Pinkney, he had not yet received back signed authorization cards from the unit employees, and that he informed Pinkney of the Petitioner's intent to collect authorization cards and intent to file a petition. Burris stated that their conversation by cell phone was interrupted by loss of transmission, and that neither he nor Pinkney called back. Burris had no further contact with the Employer until after the petition was filed on March 8.

POSITIONS OF THE PARTIES

The **Intervenor asserts** that there is a binding valid collective-bargaining agreement between it and the Employer, executed on March 7, 2000, a day prior to the filing of the instant petition on March 8. The Intervenor asserts that the contract by its terms renews itself on a yearly basis from March 1 to February 28 of each year, unless timely notice of intent to terminate is given within the appropriate window period. Thus, it is the Intervenor's position that the contract adopted by the Employer was in effect from March 1, 1996 until February 28, 1999, and renewed itself on February 28, 1999 for a year duration and again on February 28, 2000. The contract currently in effect is of one-year duration from February 28, 2000 until February 28, 2001. The Intervenor asserts that the contract bars the instant representation petition, and the petition should be dismissed. In the alternative, the Intervenor asserts that should it be determined that no valid contract exists to bar the processing of the instant petition, that the Employer's voluntary recognition of the Intervenor bars the representation petition. The Intervenor filed a post-hearing brief in support of its asserted positions.

The **Petitioner asserts** that there is no valid contract to bar the processing of the instant representation petition, since the Employer had been put on notice prior to March 7 that its employees were seeking representation by the Petitioner. The Petitioner also asserts that the collective-bargaining agreement in effect between the Intervenor and International expired on February 28, 2000 and that there was no contract in effect to "roll over" when the Employer took over operations effective March 1. The Petitioner asserts that there is neither a contract bar, nor any recognition that would bar the processing of its petition. The Petitioner did not file a brief.

The **Employer's position** is that it adopted the predecessor's collective-bargaining agreement by executing the memorandum of acceptance on March 7, based on the Intervenor's demonstration of majority support among the bargaining unit employees by presentation of authorization cards, and that the Employer believed the contract to be legal and binding. The Employer took no position on whether its recognition of the Intervenor would bar the election petition. The Employer did not file a brief.

ANALYSIS

SECTION 9(b)(3) STATUS

Section 9(b)(3) of the Act requires that the Board shall not:

> decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly

or indirectly with an organization which admits to membership, employees other than guards.

The Intervenor **Industrial, Technological and Professional Employees Union, AFL-CIO** stipulated that it admits into membership both guards and non-guard employees, is affiliated with the AFL-CIO, and therefore does not meet the definition of a guard union as defined in Section 9(b)(3) of the Act. While an employer may voluntarily recognize a guard/non-guard union, a guard/non-guard union cannot be certified by the Board. Brink's Inc., 272 NLRB 868, 870 (1985). Therefore, should it be determined that there is no bar to the processing of the instant representation petition, the Intervenor may not be placed on the ballot since it cannot be certified. However, under Stay Security, 311 NLRB 252 (1993), a valid signed agreement between an employer and a mixed guard union can bar an election petition.

RECOGNITION BAR

The Intervenor asserts that should it be determined that no valid contract exists to bar the processing of the instant petition, that the Employer's voluntary recognition of the Intervenor bars the representation petition. The Employer took no position at the hearing on whether its recognition of the incumbent Intervenor would bar the instant petition, but did not deny that it voluntarily recognized the Intervenor.

Even where there is no valid signed collective-bargaining agreement, an Employer's voluntary recognition of a Union may bar the processing of an election petition. The recognition bar doctrine, however, does not apply to units of guards represented by mixed guard unions such as the Intervenor. See Wells Fargo Corp., 270 NLRB at 789, fn. 15, 790. I find that there is no recognition bar to the processing of the instant election petition.

SUCCESSOR BAR

The Employer succeeded to the service contract between International and the Patent and Trademark Office, providing essentially the same guard services at the Crystal City, Virginia office complex. The Employer hired, as a majority of its unit, guard employees who had been employed by International. I conclude that the Employer is a successor employer to the predecessor contractor, International. Furthermore, the record shows that the Intervenor demanded recognition from the Employer as the exclusive collective-bargaining agent of its employees by letter dated March 3 to Pinkney. See St. Elizabeth Manor, 329 NLRB No. 36 slip op. At 4, fn. 8. I find, as acknowledged by the Intervenor in its Brief, that the successor bar doctrine announced in St. Elizabeth Manor, does not bar a petition seeking an election in a unit of guards if the prior collective-bargaining relationship has been with a mixed guard union.

CONTRACT BAR

A timely representation petition must be filed more than 60 days but less than 90 days before the expiration of a collective bargaining agreement, or at any time after its expiration but before a new agreement is signed. See Union Carbide Corp., 190 NLRB 191 (1971). For a contract to operate as a bar to a petition, the contract must be in writing, signed by the parties prior to the filing of the petition, must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship, must encompass the employees sought in the petition, and must cover an appropriate unit. Appalachian Shale Products Co., Inc., 121 NLRB 1160 (1958). The burden of proving that a contract is a bar is on the party asserting the doctrine. Roosevelt Memorial Park, 187 NLRB 517 (1970).

The record supports that there was a written collective-bargaining agreement signed by the Intervenor on March 1 and signed by the successor Employer on March 7. The Employer adopted the agreement between the Intervenor and the predecessor employer International. The agreement signed on March 7 consists of a series of documents: first, the collective-bargaining agreement effective from March 1, 1996 until February 28, 1999, with annual automatic renewal provisions; second, the addendum signed July 2, 1998; as well as four separate memoranda signed March 7, by which the Employer accepts the above described documents and agrees to continue deductions for health and welfare fund contributions, pension fund contributions and union dues deductions. The collective-bargaining agreement contains substantial terms covering the working conditions and economic terms of the unit of employees covered by the instant petition and agreed to by the parties as constituting an appropriate bargaining unit. The Employer's adoption of the predecessor collective bargaining agreement is explicit in its signature showing acceptance of the agreements. Ford testified that the Employer adopted the predecessor agreement, after the Intervenor demonstrated that it enjoyed majority support among the bargaining unit employees by presenting signed union authorization cards sometime between March 3 and March 7.

On March 3, the Petitioner put the Employer on notice only of its intent to obtain signed authorization cards from the Employer's employees and its intent to file a representation petition. The Petitioner's president Caleeb Burris, admitted that on March 3, when he informed Pinkney by telephone of Petitioner's intent, he had only distributed union cards to some unit employees, and had not yet received any signed cards back. The instant petition was filed on March 8. A petition is considered timely filed if the employer knew that it had been actually filed with the Board prior to signing any collective bargaining agreement. Portland Associated Morticians, 163 NLRB 614 (1967). There is no evidence in this record that the Employer had actual or constructive notice that the petition was filed prior to signing the collective bargaining agreement. The Employer's first knowledge of a petition having been filed was when the Region faxed the petition to the Employer on March 8. The collective bargaining agreement had been signed the day prior on March 7. Board law requires more than mere notice to an

employer of intent to organize employees as sufficient notice that it should not enter into a contract. Boise Cascade Corp., 178 NLRB 673 (1969).

The Petitioner asserted at the hearing that the Employer signed a contract that had expired on February 28, and so there is no contract barring the instant representation petition. The Intervenor asserted that the contract automatically renewed itself since no party gave the required notice of intent to terminate at least sixty (60) days but not more than ninety (90) days prior to the termination date of the contract. There is no evidence that either International or the Intervenor, parties to the collective-bargaining agreement, served the requisite notice to terminate. As no timely notice of intent to terminate was given, the contract renewed itself for a finite term of one year on February 28, 2000. The Employer explicitly adopted the contract by signing it on March 7. For contract bar purposes, a successor's assumption of the contract must be by express written agreement; Great Atlantic and Pacific Tea Company, 197 NLRB 922 (1972). Therefore, I find that the current collective-bargaining agreement is in effect from February 28, 2000 until February 28, 2001. A petition, to be timely, must be filed between November 30, 2000 and December 29, 2000. Accordingly, the petition is dismissed.

324-4040-3300-0000; 347-4001-5000-0000; 347-4010-9000-0000